

**2nd Sub. H.B. 334**  
**EMINENT DOMAIN**

Representative **Ralph Becker** proposes the following amendments:

1. *Page 1, Line 1:*

1 EMINENT DOMAIN **TASK FORCE**

2. *Page 1, Lines 13 through 22:*

13 task force membership, duties, compensation, and reporting requirements {~~;~~} .  
14 {~~→~~ clarifies an exclusion from a public use relating to trails, paths, or other ways for  
15 walking, hiking, bicycling, equestrian use, or other recreational uses for which  
16 eminent domain may not be used;  
17 ~~→~~ excludes emergency access ways and open land as public uses for which eminent  
18 domain may be used;  
19 ~~→~~ excludes certain parks from the scope of what is a public use for purposes of  
20 eminent domain; and  
21 ~~→~~ expresses legislative intent concerning S.B. 117 passed during the 2006 General  
22 Session.}

3. *Page 2, Lines 30 through 31:*

30 {~~AMENDS:~~  
31 ~~78-34-1, as last amended by Chapter 358, Laws of Utah 2006~~}

4. *Page 2, Line 36 through Page 4, Line 109:*

36 {~~Section 1. Section 78-34-1 is amended to read:~~  
37 ~~78-34-1. Uses for which right may be exercised.~~  
38 ~~(1) Subject to the provisions of this chapter, the right of eminent domain may be~~  
39 ~~exercised in behalf of the following public uses:~~  
40 ~~[(1)] (a) all public uses authorized by the Government of the United States[.];~~  
41 ~~[(2)] (b) public buildings and grounds for the use of the state, and all other public uses~~  
42 ~~authorized by the Legislature[.];~~  
43 ~~[(3)] (c) (i) public buildings and grounds for the use of any county, city [or~~  
44 ~~incorporated], town, or board of education;~~  
45 ~~[(ii) reservoirs, canals, aqueducts, flumes, ditches, or pipes for conducting water for the~~  
46 ~~use of the inhabitants of any county [or], city, or [incorporated] town, or for the draining of any~~

47 county, city, or [incorporated] town;  
48 ——— ~~(iii) the raising of the banks of streams, removing obstructions [therefrom] from~~  
49 ~~streams, and widening, deepening, or straightening their channels;~~  
50 ——— ~~(iv) bicycle paths and sidewalks adjacent to paved roads;~~  
51 ——— ~~(v) roads, streets, and alleys for public vehicular use, excluding:~~  
52 ——— ~~(A) trails, paths, or other ways for walking, hiking, bicycling, equestrian use, or other~~  
53 ~~recreational uses, or whose primary purpose is as a foot path, equestrian trail, bicycle path, or~~  
54 ~~walkway; and~~  
55 ——— ~~(B) paths, lanes, or other ways for emergency access; and~~  
56 ——— ~~(vi) all other public uses for the benefit of any county, city, or [incorporated] town, or~~  
57 ~~[the] their inhabitants [thereof];~~  
58 ——— ~~[(4)] (d) wharves, docks, piers, chutes, booms, ferries, bridges, toll roads, byroads,~~  
59 ~~plank and turnpike roads, roads for transportation by traction engines or road locomotives,~~  
60 ~~roads for logging or lumbering purposes, and railroads and street railways for public~~  
61 ~~transportation[.];~~  
62 ——— ~~[(5)] (e) reservoirs, dams, watergates, canals, ditches, flumes, tunnels, aqueducts and~~  
63 ~~pipes for the supplying of persons, mines, mills, smelters or other works for the reduction of~~  
64 ~~ores, with water for domestic or other uses, or for irrigation purposes, or for the draining and~~  
65 ~~reclaiming of lands, or for the floating of logs and lumber on streams not navigable, or for solar~~  
66 ~~evaporation ponds and other facilities for the recovery of minerals in solution[.];~~  
67 ——— ~~[(6)] (f) roads, railroads, tramways, tunnels, ditches, flumes, pipes and dumping places~~  
68 ~~to facilitate the milling, smelting or other reduction of ores, or the working of mines, quarries,~~  
69 ~~coal mines or mineral deposits including minerals in solution; outlets, natural or otherwise,~~  
70 ~~for the deposit or conduct of tailings, refuse or water from mills, smelters or other works for~~  
71 ~~the reduction of ores, or from mines, quarries, coal mines or mineral deposits including~~  
72 ~~minerals in solution; mill dams; gas, oil or coal pipelines, tanks or reservoirs, including any~~  
73 ~~subsurface stratum or formation in any land for the underground storage of natural gas, and in~~  
74 ~~connection therewith such other interests in property as may be required adequately to~~  
75 ~~examine, prepare, maintain, and operate such underground natural gas storage facilities; and~~  
76 ~~solar evaporation ponds and other facilities for the recovery of minerals in solution; also any~~  
77 ~~occupancy in common by the owners or possessors of different mines, quarries, coal mines,~~  
78 ~~mineral deposits, mills, smelters, or other places for the reduction of ores, or any place for the~~  
79 ~~flow, deposit or conduct of tailings or refuse matter[.];~~  
80 ——— ~~[(7)] (g) byroads leading from highways to residences and farms[.];~~  
81 ——— ~~[(8)] (h) telegraph, telephone, electric light and electric power lines, and sites for~~  
82 ~~electric light and power plants[.];~~  
83 ——— ~~[(9)] (i) sewerage of any city or town, or of any settlement of not less than ten families,~~  
84 ~~or of any public building belonging to the state, or of any college or university[.];~~  
85 ——— ~~[(10)] (j) canals, reservoirs, dams, ditches, flumes, aqueducts and pipes for supplying~~

86 ~~and storing water for the operation of machinery for the purpose of generating and transmitting~~  
87 ~~electricity for power, light or heat[-];~~  
88 ~~—— [(11)] (k) cemeteries and public parks[-], except for a park whose primary use is:~~  
89 ~~—— (i) as a trail, path, or other way for walking, hiking, bicycling, or equestrian use; or~~  
90 ~~—— (ii) to connect other trails, paths, or other ways for walking, hiking, bicycling, or~~  
91 ~~equestrian use;~~  
92 ~~—— [(12)] (l) pipe lines for the purpose of conducting any and all liquids connected with~~  
93 ~~the manufacture of beet sugar[-]; and~~  
94 ~~—— [(13)] (m) sites for mills, smelters or other works for the reduction of ores and~~  
95 ~~necessary to the successful operation thereof, including the right to take lands for the discharge~~  
96 ~~and natural distribution of smoke, fumes and dust therefrom, produced by the operation of such~~  
97 ~~works; provided, that the powers granted by this subdivision shall not be exercised in any~~  
98 ~~county where the population exceeds [twenty thousand] 20,000, or within one mile of the limits~~  
99 ~~of any city or incorporated town; nor unless the proposed condemner has the right to operate by~~  
100 ~~purchase, option to purchase or easement, at least [seventy-five per cent] 75% in value of land~~  
101 ~~acreage owned by persons or corporations situated within a radius of four miles from the mill;~~  
102 ~~smelter or other works for the reduction of ores; nor beyond the limits of said four-mile radius;~~  
103 ~~nor as to lands covered by contracts, easements or agreements existing between the condemner~~  
104 ~~and the owner of land within said limit and providing for the operation of such mill, smelter or~~  
105 ~~other works for the reduction of ores; nor until an action shall have been commenced to restrain~~  
106 ~~the operation of such mill, smelter or other works for the reduction of ores.~~  
107 ~~—— (2) Acquisition of property for preservation as open land, as defined in Section~~  
108 ~~11-38-102, is not a public use for which eminent domain may be used.}~~

109 Section {~~2~~} 1 . Eminent Domain Task Force -- Creation -- Membership -- Interim

5. Page 5, Line 127:

127 Section {~~3~~} 2 . Duties -- Interim report.

6. Page 5, Line 136:

136 Section {~~4~~} 3 . Appropriation.

7. Page 5, Line 142 through Page 6, Line 159:

142 {~~Section 5. Legislative intent.~~

143 ~~—— (1) During the 2006 General Session, the Legislature passed S.B. 117, Eminent~~  
144 ~~Domain Amendments, which, among other things, amended Section 78-34-1 of the Utah Code~~  
145 ~~relating to the public uses for which eminent domain may be exercised. One of the changes to~~  
146 ~~Subsection 78-34-1(3) made by S.B. 117 was the addition of language to indicate that trails,~~  
147 ~~paths, or other ways for walking, hiking, bicycling, equestrian use, or other recreation uses are~~

148 excluded from the public uses for which eminent domain may be used:  
149 —— (2) The change to Subsection 78-34-1(3) made by S.B. 117 was an effort to state  
150 explicitly an existing principle of eminent domain that had not previously been as explicitly  
151 stated. A clarification of the intent behind the change to Subsection 78-34-1(3) will benefit all  
152 those applying and interpreting this provision of the Utah Code:  
153 —— (3) The Legislature viewed Section 78-34-1, before the passage of S.B. 117 from the  
154 2006 General Session, as excluding trails, paths, or other ways for walking, hiking, bicycling,  
155 equestrian use, or other recreational uses, from the public uses for which eminent domain may  
156 be used.  
157 —— (4) In passing S.B. 117, it was the intent of the Legislature that the addition of new  
158 language to Subsection 78-34-1(3) after the word "alleys" was to state explicitly those  
159 enumerated exclusions that had not previously been as explicitly stated.}

8. *Page 6, Line 161:*

161            {Sections 2 through 4 of this}    This bill    {are}    is repealed November 30, 2007.